



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT**

### **ISSUED TO**

**W.W. Realty Associates, LLC**

**VPDES Permit No. VAG84**

**Storm Water Registration No. VAG840149**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and W.W. Realty Associates, LLC for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act [33 United States Code § 1315(b)] and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "DMR" means Discharge Monitoring Report.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Facility" means the W.W. Realty Associates, LLC Route 17 Mine, a sand mining operation located east of Route 17 in Camden County, North Carolina, from which discharges of stormwater associated with nonmetallic mineral mining to Virginia state waters occur.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES General Permit No. VAG84, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. W.W. Realty Associates, LLC applied for registration under the Permit and was issued Registration No. VAG840149 on July 1, 2014.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not

sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

14. “Regulation” means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity,” 9 VAC 25-151-10, *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. “SWP3” means Stormwater Pollution Prevention Plan.
17. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.
21. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
22. “WWRA” means W.W. Realty Associates, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. WWRA is a “person” within the meaning of Va. Code § 62.1-44.3.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. WWRA owns the Facility located east of Route 17 in Camden County, North Carolina, which discharges into Virginia stormwater associated with nonmetallic mineral mining.
2. The Permit allows WWRA to discharge stormwater associated with nonmetallic mineral mining from the Facility to an unnamed tributary in Virginia of the Upper Northwest River, in strict compliance with the terms and conditions of the Permit.
3. The Upper Northwest River is located in the Chowan River and Dismal Swamp Basin. The Upper Northwest River is listed in DEQ’s 305(b) report as impaired for aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria. The source of the impairment is unknown.

4. Part I.A.1 of the Permit requires WWRA to submit quarterly DMRs.
5. Part II.F of the Permit requires WWRA to make the SWP3, annual site compliance inspection reports, training records and other records associated with the discharges of stormwater available to DEQ upon request.
6. Part I.A.1 of the Permit requires WWRA to meet effluent limitations for Total Suspended Solids ("TSS").
7. Part III.K.2 of the Permit requires DMRs submitted by WWRA to be signed by a corporate officer, manager or duly authorized representative.
8. During DEQ Facility inspection on October 23, 2013 and subsequent file reviews, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
  - a. DMRs had not been submitted for the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2013 and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2014.
  - b. The SWP3 was not made available upon request.
  - c. Annual Site Compliance Inspection Reports were not made available upon request
  - d. Training records were not made available upon request.
  - e. Records associated with the discharges of stormwater were not made available upon request
  - f. The DMR for the 3<sup>rd</sup> quarter of 2013 indicated Permit limit exceedances for TSS concentration average and concentration maximum respectively: 65mg/l (limit 30 mg/l), 65 mg/l (limit 60 mg/l)
  - g. The DMR for the 3<sup>rd</sup> quarter of 2013 was not signed by a corporate office, manager or authorized representative of WWRA
9. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
10. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
12. The Department has issued coverage under no permits or certificates to W. W. Realty Associates, LLC other than under VPDES Permit No. VAG84.

13. The unnamed tributary of the Upper Northwest River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
14. TRO issued NOV No. W2014-02-T-0002 on February 20, 2014, NOV No. W2014-04-T-0003 on May 6, 2014, WL No. W2014-08-T-1004 on August 12, 2014, NOV No. W2014-11-T-0001 on November 4, 2014 and NOV No. W2015-02-T-0003 on February 5, 2015 for the violations noted in paragraphs C(4) through C(8), above.
15. On April 3, 2014, DEQ met with WWRA staff to discuss the NOV.
16. Based on the results of the October 23, 2013 inspection and subsequent file reviews and the April 3, 2014 meeting with WWRA representatives, the Board concludes that WWRA has violated Part I.A.1, Part II.F, and Part III.K.2 of the Permit, the Regulation and the Code as described in paragraphs C(4) through C(13), above.
17. In order for WWRA to complete its return to compliance, DEQ staff and WWRA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders WWRA, and WWRA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,250.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

WWRA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, WWRA shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of WWRA, for good cause shown by WWRA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, WWRA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. WWRA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. WWRA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by WWRA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. WWRA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. WWRA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WWRA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may

delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which WWRA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and WWRA. Nevertheless, WWRA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after WWRA has completed all of the requirements of the Order;
  - b. WWRA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to WWRA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WWRA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by WWRA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of WWRA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind WWRA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of WWRA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, WWRA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7 day of May,  
2015.

  
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Regional Director  
Department of Environmental Quality



W.W. Realty Associates, LLC voluntarily agrees to the issuance of this Order.

Date: 3/12/15 By: Frank T Williams MEMBER  
(Person) (Title)  
W.W. Realty Associates, LLC

Commonwealth of Virginia

(City) County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of  
MARCH, 20 15, by FRANK T. WILLIAMS who is  
MEMBER of W.W. Realty Associates, LLC, on behalf of the company.

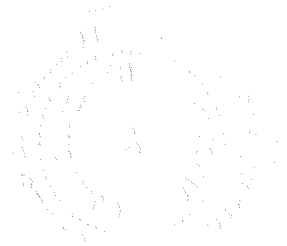
James D. Schmitt  
Notary Public

257769

Registration No.

My commission expires: 10/31/17

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

WWRA shall:

1. By June 1, 2015, submit to DEQ TRO for review and approval a Facility SWP3.
2. By June 1, 2015, submit to DEQ TRO training records and records associated with wastewater discharges for 2014 and 2015 including the lease date(s) of the Facility, the date(s) that dewatering pumps started pumping water from the borrow pit, dates(s) of discharges to state waters, the flow rate of the dewatering pumps and pumping dates/times.
3. By June 10, 2015, July 10, 2015, August, 2015, September 10, 2015, October 10, 2015 and November 10, 2015 submit to DEQ Tidewater Regional Office, monthly DMRs that include sampling results for the parameters listed in Part I.A.1 for the preceding month, and results of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of WWRA, to ensure compliance with the Facility SWP3 and the Permit during the preceding month. Reports shall include a discussion of any corrective action taken in response to deficiencies noted during any inspection or examination.
4. Comply with all conditions of the Permit.
5. Mail all submittals and reports required by this Appendix A to:

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462